

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  QWEST CORPORATION, f/k/a U S WEST COMMUNICATIONS, INC.	DOCKET NO. TF-00-250 (RPU-98-4)
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**ORDER ESTABLISHING PRICE PLAN RATE REDUCTION**

(Issued December 21, 2000)

On October 3, 2000, Qwest Corporation, f/k/a U S WEST Communications, Inc. (Qwest), filed a proposed tariff with the Utilities Board (Board) designed to reduce certain rates to comply with Qwest's price regulation plan. The rates proposed to be reduced were primarily local exchange business lines in rate group three and certain rates in rate group two. The rate reduction reflected a 0.97 percent overall decrease in Qwest rates. The tariff filing has been identified as Docket No. TF-00-250.

On October 8, 1999, Qwest filed its calculation as required by the price plan, using the Gross Domestic Product Price Index (GDPPI) Table 7.1 for Quarter II price indexes from 1998 and 1999. The calculation using the September 1999 advance GDPPI resulted in a reduction of 1.41 percent. Qwest filed an amended calculation using the October 1999 advance GDPPI, on November 8, 1999, which resulted in a reduction of 1.21 percent. The 1.21 percent reduction was accepted by the Board and was deferred for one year as allowed by the price plan. Qwest in its filing on October 3, 2000, recalculated the 1.21 percent reduction to 0.97 percent, based upon

a revised GDPPI. Qwest stated that the reduction was designed to go into effect on November 7, 2000.

On October 18, 2000, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed an objection to the tariff requesting the Board order Qwest to utilize the 1.41 percent reduction or to docket the matter for an expedited resolution. Consumer Advocate requested further that the Board order Qwest to implement the 1.41 percent across-the-board decrease if the proceeding extended beyond November 7, 2000. Consumer Advocate contended that the proposed tariff did not comply with the terms of the price regulation plan approved by the Board on September 28, 1998. Consumer Advocate asserted that the price plan required Qwest to reduce basic communications services (BCS) prices "in a percentage amount equal to the amount that the productivity offset exceeds the annual rate of inflation." Consumer Advocate contended that the proposed tariff violates the price plan by only reducing certain BCS rates and by recalculating the reduction based upon a revised GDPPI for Quarter II 1999.

On October 23, 2000, WorldCom, Inc. (WorldCom), filed an objection to the proposed tariff. WorldCom stated that it supported Consumer Advocate and requested that the Board reject the proposed tariff as not being in compliance with the price regulation plan.

On October 27, 2000, the Board issued an order docketing the proposed tariff and setting a briefing schedule. The Board directed the parties to address two issues in their briefs. First, should the rate decrease percentage be based on the GDPPI for

Quarter II 1999 published prior to the initial filing on October 8, 1999, or as published prior to the October 3, 2000, filing? Second, must the rate decrease be across-the-board or may it be applied to selected basic communications services rates? The order also made WorldCom a party to the proceeding.

On November 3, 2000, briefs were filed by Qwest and Consumer Advocate. WorldCom filed a statement in lieu of a brief. Additionally, on November 3, 2000, Qwest filed a revision to its proposed reduction of October 3. Qwest in its November 3 filing proposed to offset the revenue reduction under the price plan with the reduction in revenues from the Centrex Plus rate reduction, which was effective on August 7, 2000.

To resolve the issues raised in this docket, the Board must determine the meaning of paragraph III, subsections D and E of the price regulation plan and the provisions of Iowa Code §§ 476.97(3)"a"(5) and (6). The subsections in the price plan state:

D. Price Increases. U S West may increase on an annual basis through the year 2000, any BCS price, except for intrastate switched access service, by a percentage amount equal to that amount which the annual inflation rate exceeds the 2.6% annual productivity factor. After the year 2000 the annual inflation rate and productivity factor may be modified by the Board.

1. The inflation rate shall be the annual percentage change (the value of the index in the most recent quarter divided by the value of the index for that quarter in the previous year minus one) in the Gross Domestic Product Price Index (GDPPI) constructed using chain-type annual weights as published in the most recently available monthly edition of the U.S. Department of Commerce's Survey of Current Business, Table 7.1.

E. Price Decreases. U S West can decrease any BCS price to any lawful price, upon a showing that the requirements of IAC 38.5(4) are met. Any such decrease may be accumulated and used to offset a decrease or portion thereof required during the following 12 months.

U S West shall decrease its BCS price in a percentage amount equal to the amount that the Productivity offset exceeds the annual rate of inflation (determined in accord with D. above) on an anniversary date of the effective date of this plan. If the required decrease is less than 2%, the reduction may be deferred for one year. Any required price decrease can be offset by a price increase, which would have been permitted during the preceding 12 months.

These subsections of the Qwest price plan implement the provisions of Iowa Code §§ 476.97(3)"a"(5) and (6). Subparagraph (5) establishes the productivity factor of 2.6 percent and requires the use of the GDPPI for the inflation measure for price plans approved by the Board. Subparagraph (6) provides that price decreases of less than 2 percent may be deferred for one year.

The first issue to be addressed concerns the proper GDPPI to use in the calculation of a reduction or increase in rates under Qwest's price plan. Qwest in its brief conceded that its filing of October 3, 2000, in which it revised the percentage decrease using updates made in the year 2000, was not consistent with the provisions of the price regulation plan. Qwest stated the proper calculation required the use of the "most recently available monthly edition of the U.S. Department of Commerce's Survey of Current Business, Table 7.1," prior to the anniversary date of the price plan. Qwest states that its filing of October 8, 1999, was based upon a September 30, 1999, GDPPI. Qwest then revised its calculation based upon the

October 1999 GDPPI, and that calculation resulted in a decrease of 1.21 percent.

This 1.21 percent was then accepted by the Board on November 18, 1999.

Qwest suggests that not only does the language of the plan require the most recent monthly GDPPI, the application of the GDPPI to either an increase or decrease is only possible if it is calculated at the time of the anniversary, and without later revision. Qwest points out that to allow a revision at a later date would raise the potential for a company to be in compliance with a deferral under a price plan in the year of deferral, but a revision could put the company in violation of the 2 percent limit the next year. This situation alone Qwest contends means that only a GDPPI before the anniversary should be used.

Consumer Advocate states that the filing and calculation made by Qwest on October 8, 1999, is the correct GDPPI to use. This filing used the September 30, 1999, GDPPI and resulted in a decrease of 1.41 percent. Consumer Advocate contends that Qwest did not file its revision using the October 1999 GDPPI until November 8, 1999, which was after the anniversary of the plan, and therefore it cannot be utilized.

The Board finds that the price plan requires that the GDPPI to be used in the calculation should be the "most recently available monthly edition" of Table 7.1 of the U.S. Department of Commerce's Survey of Current Business. The most recent edition prior to the anniversary date of November 7, 1999, of the plan was the one published at the end of October 1999. Qwest made a revised filing on November 8, 1999, to reflect the most recent information. Consumer Advocate's position is not

consistent with the wording of the price plan. Qwest's November 8, 1999, filing contains the most recent GDPPI prior to the anniversary date of the plan, and therefore it contains the correct GDPPI for calculating the price decrease for the year ending November 7, 1999.

The proper interpretation of the statute and price plan on the issue of whether an across-the-board reduction is required is more problematic. The statutory language does not specifically address this issue, and the statute, which allows deferral of reductions under 2 percent, does not mention revenues. Consumer Advocate contends that the lack of a mention of revenues or revenue requirement in the statute should be interpreted to mean that the legislature intended for any decrease to go to all BCS rates, not those selected by the company. Consumer Advocate argues that Qwest by translating the percentage decrease into revenues has introduced an additional step into the process. It is Consumer Advocate's position that the percentage decrease is to be applied to all BCS rates without regard to the amount of revenue decrease that will result.

WorldCom supports Consumer Advocate's position on the across-the-board decrease and took no position on the correct GDPPI to utilize in the calculation of an increase or decrease.

The Board does not agree with Consumer Advocate's contentions. Based upon the language in the plan and past Board action, the Board finds that it has the discretion to allow decreases to specific BCS prices, rather than across-the-board. The Board in Docket No. TF-99-313 followed this interpretation in allowing GTE

Midwest Incorporated (GTE), while operating under the statutory price plan in § 476.97(11), to reduce rural zone rate additives to effect a required price decrease. As discussed below, the plan approved by the Board for Qwest gives the company discretion on how to apply any required decrease. The Board retains the right to review the proposed reductions to determine whether they are lawful.

The language in subsection D of Qwest's plan states that Qwest may increase "any BCS price, except intrastate switched access service, by a percentage amount equal to that amount which the annual inflation rate exceeds the 2.6 percent annual productivity factor." This language suggests that Qwest cannot choose to increase a BCS price more than the required percentage, but arguably can choose not to apply the increase to a specific BCS price.

Contrast this with the provision in the first paragraph of subsection E of the plan that Qwest can decrease "any BCS price," accumulate the decrease, and then use it to offset a decrease required during the following 12 months. This provision seems to allow Qwest to pick and choose where to implement the required decrease and to choose any amount for the decrease for each BCS price reduced. To be able to pick and choose which prices to reduce, a company would have to translate the percentage reduction into a revenue amount in order to ensure that the total decrease occurs. This then adds a step to the process that is not mentioned in the statute or the plan, but which has been an accepted part of regulation.

Subsection E in its second paragraph also contains language similar to that found in subsection D for increases. The subsection provides that Qwest "shall

decrease its BCS price in a percentage amount equal to the amount that the productivity offset exceeds the annual rate of inflation (determined in accord with D. above) on an anniversary date of the effective date of this plan." If this were the only provision in subsection E, then Qwest would have the same limited discretion for decreases that it has for increases. The inclusion of the discretionary language in the first paragraph of subsection E and not in D indicates an intent to allow Qwest more discretion for decreases than for increases. In other words, Qwest can pick and choose which BCS prices to decrease and in what amount, so long as the price is lawful; but it can only implement increases up to the calculated percentage. The Board therefore finds that the Qwest price plan allows Qwest to make targeted reductions.

A third issue has been raised by the November 3, 2000, Qwest filing. In that filing Qwest proposes to offset the required decrease for the year ending November 7, 1999, by the revenue reduction from the Centrex Plus rate reduction in 2000. In the October 3, 2000, filing Qwest proposed to reduce certain rate group three business line rates and some rate group two business line rates, but did not include the Centrex Plus reduction.

The Board finds that the November 3 revision is untimely and should not be allowed. To allow Qwest to amend its proposal at the time of the final brief would be unfair to the other parties, since they had no opportunity to respond.

The Board finds that the proper GDPPI calculation is the 1.21 percent decrease filed by Qwest on November 8, 1999. Qwest shall calculate an overall

revenue reduction, which reflects the 1.21 percent decrease and shall file proposed tariffs reducing the business line rates as proposed on October 8, 2000. Since the price reduction has been delayed, the Board will direct Qwest to expedite the filing of proposed tariffs to comply with this order and will reduce the time for objections and limit objections to whether the proposed tariffs comply with this order.

**IT IS THEREFORE ORDERED:**

1. Qwest Corporation shall file proposed tariffs that reduce the business line rates as proposed on October 8, 2000, and that equals a total revenue reduction of 1.21 percent.

2. The proposed tariffs shall be filed on or before five days of the date of this order, with an effective date of 15 days after the date of this order. Objections to the tariffs are limited to the tariff's compliance with this order, and any objections shall be filed on or before five business days from the date the proposed tariffs are filed.

**UTILITIES BOARD**

/s/ Allan T. Thoms

/s/ Susan J. Frye

ATTEST:

/s/ Raymond K. Vawter, Jr.  
Executive Secretary

/s/ Diane Munns

Dated at Des Moines, Iowa, this 21<sup>st</sup> day of December, 2000.